

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

WENDY R. DAVENPORT,)
Plaintiff,)
v.)
CAROLYN W. COLVIN, Acting) Case No. CIV-14-132-KEW
Commissioner of Social)
Security Administration,)
Defendant.)

OPINION AND ORDER

This matter comes before this Court on Plaintiff's Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by Timothy M. White, counsel for Plaintiff (Docket Entry #37). Counsel requests an extension of time under Fed. R. Civ. P. 60 to file a motion for attorney's fees pursuant to 42 U.S.C. § 406(b) because he has not yet received a copy of the agency award upon which the request would be based. Counsel requests he be allowed until sixty (60) days after receiving the Notice of Award to file a § 406(b) motion.

This Court sympathizes with counsel's quandary created by the unique procedure under Social Security law which does not neatly fit within the normal requirements of civil procedure. Clearly, counsel has employed the appropriate method for seeking and obtaining an extension under Fed. R. Civ. P. 60(b)(6). McGraw v. Barnhart, 450 F.3d 493, 505 (10th Cir. 2006). The timeliness in filing the motion for attorney fees will be gauged upon the standard of reasonableness, which certainly will encompass the time required to obtain a copy of the award.

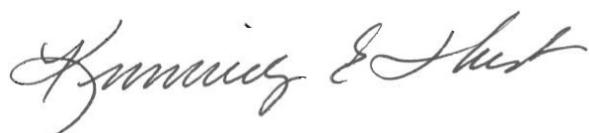
While a Rule 60(b) request can be combined with the § 406(b) motion in most instances, the filing of a separate extension motion

may be required in instances where a significant delay in obtaining the award occurs. As with most areas of the law, a hard and fast rule is not entirely possible and counsel will have to evaluate each case separately for their particular circumstance.

In this case, this Court entered judgment on September 28, 2015 reversing and remanding Defendant's decision. Counsel received notice of a fully favorable decision from Defendant dated October 28, 2016. Counsel is on notice to be seeking the notice of award and should file his attorney fee motion under § 406(b) as soon as possible after receipt of the Notice. While counsel requests sixty (60) days after receiving the Notice to file his fee motion, this Court finds a more appropriate time within which to file to be thirty (30) days.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by Timothy M. White, Plaintiff's counsel (Docket Entry #37) is hereby **GRANTED**. Plaintiff's counsel shall file his motion for attorneys' fees under 42 U.S.C. § 406(b) within thirty (30) days of receipt of the notice of award. Counsel shall make every effort to obtain the notice as soon as possible so that the delay is not considered unreasonable.

IT IS SO ORDERED this 6th day of December, 2016.



KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE